

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEVONTA B. GRAHAM,
AKA BOBBY GRAHAM,

Petitioner,

v.

TAMMY FOSS, Acting Warden,¹

Respondent.

Case No. [19-cv-04106-DMR](#) (PR)

ORDER OF TRANSFER

Petitioner, a state prisoner currently incarcerated at Salinas Valley State Prison, has filed this *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the validity of his conviction obtained in the Sacramento County Superior Court. Dkt. 1. He has neither paid the filing fee nor filed an *in forma pauperis* (“IFP”) application.

On July 16, 2019, the Clerk of the Court informed Petitioner that this action has been assigned to the undersigned Magistrate Judge.² Dkt. 3.

A petition for a writ of habeas corpus made by a person in custody under the judgment and sentence of a state court of a State which contains two or more federal judicial districts may be filed in either the district of confinement or the district of conviction. *See* 28 U.S.C. § 2241(d). The district court where the petition is filed, however, may transfer the petition to the other district in the furtherance of justice. *See id.* Federal courts in California traditionally have chosen to hear petitions challenging a conviction or sentence in the district of conviction. *See Dannenberg v. Ingle*, 831 F. Supp. 767, 767 (N.D. Cal. 1993); *Laue v. Nelson*, 279 F. Supp. 265, 266 (N.D. Cal.

¹ Tammy Foss, the current acting warden of the prison where Petitioner is incarcerated, has been substituted as Respondent pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

² To date, Petitioner has not yet returned the form indicating whether he consents to or declines magistrate judge jurisdiction in this action.

1 1968). If the petition is directed to the manner in which a sentence is being executed, e.g., if it
2 involves parole or time credits claims, the district of confinement is the preferable forum. *See*
3 Habeas L.R. 2254-3(a); *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989).

4 Here, Petitioner challenges a conviction and sentence incurred in the Sacramento County
5 Superior Court, which is within the venue of the Eastern District of California. Therefore, the
6 United States District Court for the Eastern District of California has jurisdiction over this matter.

7 Pursuant to 28 U.S.C. § 1406(a) and Habeas L.R. 2254-3(b), and in the interest of justice,
8 this action is TRANSFERRED to the United States District Court for the Eastern District of
9 California.³ Therefore, the Clerk shall transfer the case forthwith.

10 If Petitioner wishes to further pursue this action, he must either pay the \$ 5.00 filing fee or
11 complete the IFP application required by the United States District Court for the Eastern District
12 of California and mail it to that district.

13 IT IS SO ORDERED.

14 Dated: July 23, 2019

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17 DONNA M. RYU
18 United States Magistrate Judge

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³ Venue transfer is a non-dispositive matter and, thus, it falls within the scope of the
jurisdiction of the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEVONTA B. GRAHAM,
Plaintiff,
v.
D. AVILA,
Defendant.

Case No. [4:19-cv-04106-DMR](#)

CERTIFICATE OF SERVICE


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 23, 2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Devonta B. Graham
AK-4734
Salinas Valley State Prison
PO Box 1050
Soledad, CA 93960

Dated: July 23, 2019

Susan Y. Soong
Clerk, United States District Court

By: 
Ivy Lerma Garcia, Deputy Clerk to the
Honorable DONNA M. RYU